

August 9, 2005

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L04P0013**
Proposed Ordinance No. **2005-0253**

CAVANAUGH SUBDIVISION

Preliminary Plat Application and SEPA Appeal

Location: North of Fairwood Blvd. (Fairwood Park Div. 22), west of SE 166th St.,
160th Pl. SE, with westerly extensions of SE 160th Pl. and SE 164th Pl.

Applicant: Lennon Investments, Inc.
represented by **Robert Johns**, Attorney
Johns Monroe Mitsunaga
1500 – 114th Avenue Southeast, Suite 102
Bellevue, Washington 98004
Telephone: (425) 451-2812
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Appellants: Ridge at Fairwood Home Owners Association
represented by **Susan Sampson**, Attorney
1400 Talbot Rd. S, # 400
Renton, WA 98055
Telephone: (425) 235-4800

King County: Department of Development and Environmental Services,
represented by **Kim Claussen**
900 Oakesdale Avenue Southwest
Renton, Washington 98055
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SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:
Department's Final Recommendation:

Approve subject to conditions
Approve subject to revised conditions

Examiner's Decision:

SEPA Threshold Determination Appeal:

Denied, subject to revised conditions

Preliminary Plat Application:

Approved, subject to revised conditions

EXAMINER PROCEEDINGS:

Hearing Opened:

July 26, 2005

Hearing Closed:

July 26, 2005

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. **General Information:**

Developer:	Rick Lennon Lennon Investments, Inc. 35815 SE David Powell Road Fall City, WA 98024 425-222-7139
Engineer:	Goldsmith Associates PO Box 3565 Bellevue, WA 98009 425-462-1080
STR:	26-23-05
Location:	Generally located north of Fairwood Boulevard (Fairwood Park Div. 22), west of SE 166 th St., 160 th Pl. SE with westerly extensions of SE 160 th Place and SE 164 th Place
Zoning:	R-4
Acreage:	66.1 acres
Number of Lots:	55
Density:	Approximately 1.2 units per acre
Lot Size:	Approximately 4,000 – 7,500 square feet in size
Proposed Use:	Single Family Detached Dwellings
Sewage Disposal:	Cedar River Water & Sewer District
Water Supply:	Cedar River Water & Sewer District
Fire District:	King County Fire District No. 40
School District:	Kent School District

Complete Application Date: July 30, 2004

2. Except as modified herein, the facts set forth in the King County Land Use Services Division's preliminary reports to the King County Hearing Examiner for the July 26, 2005, public hearing (Exhibits 2a and 2b) are found to be correct and are incorporated herein by reference. The LUSD staff recommends denial of the SEPA appeal and approval of the plat application, subject to conditions.
3. The Cavanaugh preliminary plat application was filed on July 30, 2004, to subdivide 66.1 acres into 55 lots for single-family residential development. The preliminary plat map subject to review within this proceeding is the March 11, 2005, revision. A mitigated determination of non-significance was issued for the Cavanaugh plat application by DDES on May 27, 2005. The MDNS conditions require placement of a four-foot high split rail fence and signage along the outer boundaries of the sensitive areas tracts and, rather oddly, a pedestrian-activated signal on Fairwood Boulevard at an undisclosed location. The second condition provides insufficient detail to evaluate its effectiveness as mitigation, but it was neither appealed by the Applicant nor challenged by the SEPA Appellants.
4. A timely appeal of the SEPA threshold determination was submitted by the Ridge at Fairwood Home Owners' Association. A pre-hearing conference was held on June 28, 2005, at which time the SEPA appeal issues were defined as including infiltration of surface water runoff on slide-prone slopes north of the site, traffic safety risks to pedestrians on the residential access streets within Fairwood, the adequacy of emergency vehicle access to the plat to respond to fire safety risks and potential construction impacts to the neighborhood from dust and noise. Other issues raised by the Home Owners' Association appeal statement were deemed to be more properly matters subject to the plat review process. A consolidated public hearing on both the Cavanaugh preliminary plat application and the SEPA threshold determination appeal was held by the King County Hearing Examiner's Office on July 26, 2005.
5. The Cavanaugh plat application is unusual in many respects. First, plat development is proposed to occur within two physically separated development pods. The northern pod, accessed by Southeast 160th Place, is slated for development of 23 single-family lots. The southern pod extending off Southeast 164th Place is proposed for 32 lot development. Most of the lots proposed off of Southeast 164th Place are small, generally measuring 4,000 square feet. The irregular and rather large lots 45 and 46 at the western terminus of the southern pod are an exception. The two development pods are separated by an approximately 750-foot wide Bonneville Power Administration easement and by an extensive complex of wetlands. The density of the wetland complex onsite discourages developing road access between the two pods through the BPA easement.
6. A second distinctive feature of the Cavanaugh plat property is that it is bordered on three sides by steep erosional and landslide-prone slopes. The slopes on the south and west sides drop into a ravine that contains Madsen Creek. The slope on the north side descends to the Cedar River Valley. The Cavanaugh property comprises the northwest corner of an upland plateau that locally contains the Fairwood neighborhood. The only road access to the property is via the Fairwood street system, with both Southeast 160th Place and Southeast 164th Place having been previously stubbed to the Cavanaugh eastern boundary. The issues raised by the SEPA appeal are largely the consequence of problems attendant to development of the outer edge of an upland plateau where it drops steeply to the valley below.

7. Even though the Madsen Creek ravine has experienced major erosional and landsliding events, most of the hearing discussion focused on the slopes north of the northern pod. The reasons are that most of the highly-erosional portions of the Madsen ravine are far removed from plat development and the County has already implemented a regional stormwater conveyance system to transport flows from this portion of the plateau downslope to the creek. The regional conveyance pipe has sufficient capacity remaining to accommodate flows from the Cavanaugh southern pod R/D tract, thus effectively resolving drainage issues with respect to that part of the proposed development.
8. There is, however, no existing stormwater conveyance system to serve the northern 23 lots. Accordingly, the study and resolution of drainage issues for the northern pod has been and remains a major focus of review. Of particular concern is an erosional ravine that intrudes onto the plat property between lots 9 and 10 and declines steeply to the northwest into the Cedar River Valley, descending an estimated 300 feet over a lateral distance of less than 1,000 feet. At the base of the slope lie a mobile home park, a church and a new mixed use development, as well as a large alluvial fan created by previous slides. The potential risk is that runoff from the Cavanaugh plat could further destabilize soils within this ravine and exacerbate landsliding problems. These concerns are supported by the following facts: at a 60 to 70 percent grade the slope lies at or near its angle of repose, the primary cause of slope instability is saturated soils, and a long history of sliding activity exists at this location.
9. Some of the more recent slides within this northern ravine are in major part the consequence of development modifications. It appears that the Aqua Barn Ranch in the mid-1960s constructed a poorly engineered horse trail within the ravine. Then in 1984 the Cedar River Water and Sewer District installed water and sewer lines in the ravine within a 20-foot wide easement. Despite attempts by the District at erosion and drainage control, a combination of unusually heavy storm events and continued manipulation of the horse trail by Aqua Barn resulted in major erosion and slide occurrences in 1986, 1991 and 1996. Geotechnical studies performed by GeoEngineers, Inc., dating back to the 1980s, which were contracted by both the utility district and the Cavanaugh ownership, provide much of the specific information available concerning the geomorphology of the area. Jon Koloski, a Ridge at Fairwood resident and SEPA Appellant, was one of the GeoEngineers consultants who prepared these reports.
10. The stratigraphy of the north slope ravine is generally described within an October 20, 1992, GeoEngineers' report. It describes surficial soils deposited at the ravine top to a depth of approximately three feet, underlain by a Vashon glacial till cap that is dense and largely impermeable. Beneath the till cap are pre-Vashon sand and silt deposits into which is interbedded at approximately mid-slope a 30-foot thick layer of hard clay-impregnated silt. Beneath this intervening layer the pre-Vashon sand and silt deposits reemerge and extend to the valley floor where the alluvial fan is encountered. No upland surface flow to the ravine has been identified, but within the ravine itself numerous springs are perched within the pre-Vashon deposits, particularly at its contact with the clay/silt layer.
11. A major unknown variable within the review process is the actual thickness of the upland till cap at any particular location. The March 29, 1996, GeoEngineers' report describes the till mantle as "usually 30 to 40 feet thick." A May 6, 1999, GeoEngineers' report states that "In general, the upland portion of the property is mantled by glacial till that ranges from about 5 to 40 feet in thickness." This report also notes that the pre-Vashon stratified drift beneath the till cap "was observed from approximate elevation 460 feet MSL to approximate elevation 420 feet MSL."

12. The Terra Associates geotechnical report performed for the Applicant dated April 12, 2004, is based primarily on a series of test pits that were excavated on the Cavanaugh property on March 1st and 2nd, 2004. The Terra report confirms the presence of the glacial till cap beginning at about a depth of four feet below the site surface. Due to the termination of the test pits at depths of 15 feet or less, the Terra report does not describe the till cap's thickness. Mr. Koloski reported observing a probable hole in the till layer directly north of the stormwater tract at approximately lot 12, and as quoted above the May 6, 1999, GeoEngineers' report suggests that the bottom of the till layer may be at approximately elevation 460 MSL, both of which suggest a possible thinning of the till cap near the northern plateau edge.
13. As will be further discussed below, a major question raised by the SEPA Appellants is whether employment of onsite wetland Y as an overflow facility for the proposed stormwater tract immediately to its west will result in increased interflow from the wetland to the northern ravine. The top of the ravine is approximately 200 feet from the wetland edge and is pointed directly at the center of the wetland area. In addition, a sanitary sewer easement is proposed along the eastern margin of the topographical flow path between the wetland and the ravine.
14. Terra excavated two test pits in the area lying between wetland Y and the northern ravine. Test pit TP-11 was just north of the wetland and showed silty sand with gravel to a depth of about four feet with "light seepage perched groundwater at three feet." Below four feet the silty sand layer becomes more dense and cemented and is described by Terra as weathered glacial till. Beginning at ten feet it is described as consolidated glacial till or hardpan. Test pit number TP-10 was excavated some 50 feet northwest of TP-11. Its characteristics were nearly identical except that no seepage was recorded but instead the driller encountered a "four-foot diameter boulder at approximately 3.5 feet."
15. In reliance upon test pits TP-10 and TP-11 the April 12, 2004, Terra Associates geotechnical study drew the following conclusions:

"Wetland Y is a closed depression located approximately 200 feet south-southeast of the top of the steep slope that encroaches into the northern portion of the site.

"We observed standing water in Wetland Y at the time of our field work; however, we did not observe any indications of surface water flow or wet surface conditions between Wetland Y and the top of the steep slope. Our site explorations indicate that the area between Wetland Y and the top of the steep slope is underlain by dense to very dense glacial till below a depth of approximately four feet. We observed light seepage of perched ground water approximately three feet below the ground surface in Test Pit TP-11, which was excavated approximately 60 feet from the edge of the wetland and approximately 140 feet from the top of the steep slope. We did not observe ground water in Test Pit TP-10 which was located between Test Pit TP-11 and the top of the steep slope.

"Based on our observations, it does not appear that water is currently migrating between Wetland Y and the top of the steep slope via interflow. This is confirmed by the apparent absence of seepage on the mid to upper portions of the steep slope....

"Based on our study, and provided that water levels in the wetland are maintained near their current elevation, it is our opinion that discharging site storm water into

Wetland Y will have no significant impact on interflow seepage, rates or volumes that might adversely impact stability of the steep slope. Additional study will be required if water levels in the wetland will be significantly increased for extended periods of time.”

16. While the Terra conclusions appear to be valid as far as they go, the report does not attempt to answer the question raised by the SEPA appeal, which is whether there will be an increase in interflow to the northern ravine from wetland Y if during a major storm event the wetland level is increased by flows diverted from the stormwater pond and these increased wetland water elevations endure for an extended period of time. As a practical matter, however, Southeast 160th Place serving the northern pod of plat lots will pass between wetland Y and the north slope. One solution to the problem is to require the road design to undertake a secondary function as a flow barrier.
17. The Cavanaugh plat proposes a nearly four acre stormwater detention pond to serve the 23 lots of the northern pod. This pond is proposed to be constructed within the BPA easement just south of Southeast 160th Place within the glacial till mantle. Flows from the pond are not designed to discharge except under limited conditions. The large pond area will allow evaporation and slow infiltration through the till layer to disperse most flows, with a normal pond level secondarily maintained by tightline discharges at low flow rates to Madsen Creek. The pond is being sized to accommodate at least the 100-year design storm, but also will have the option of overflowing to wetland Y during major storm events. If wetland Y's capacity is exceeded, secondary overflow will be directed to Madsen Creek via the tightline. Although this facility has only been conceptualized in a very general way, a surface water adjustment issued May 12, 2005, for flow diversion places some broad conditions on its implementation.
18. Base on the assumption that after pond excavation there will remain a sufficient thickness and distribution of glacial till to serve as a pond bottom with a normal till infiltration rate, the expectation is that the proposed northern facility will have a capacity which substantially exceeds the requirements for containing a 100-year storm event. The great unknown is the actual status of the till layer that will be uncovered when the pond is excavated. The SEPA Appellants proposed that test pits be drilled to assess the till depth prior to pond excavation, but no essential purpose would be served by such a requirement. If, after pond excavation the till layer is thin or absent, a pond liner can be engineered and installed. What cannot be determined at this point is what the actual pond infiltration rate will turn out to be. If an impermeable liner ends up being required, the infiltration rate could be greatly decreased, which will in turn increase the likelihood of major storm overflows to wetland Y. Thus, the primary present consequence of not knowing the depth of till beneath the stormwater tract is not that the pond design becomes infeasible but that the frequency and depth of overflow impacts to wetland Y become more difficult to ascertain.
19. Two road variances have been issued for the Cavanaugh plat, both of which reflect its location as infill development on the fringe of Fairwood where the upland plateau borders steep ravines. A June 18, 2003, road variance relieves the plat from the restriction of KCRS 2.20 that limits residential development on a single-access road system to 100 lots without creation of a second access. More recently, on March 7, 2005, a related variance was issued to access more than 50 potential lots from a cul-de-sac whose length exceeds 1,000 feet. In both instances the steep slopes preclude access from any direction except the east through the existing Fairwood neighborhood, and the established layout of the Fairwood road system dictates the range of

access possibilities. The Fairwood road system reflects a planning approach that differs from current standards. If Fairwood were to be redesigned today, it would probably feature a primary collector arterial having few direct access driveways, with neighborhood collectors and local access streets branching off. Fairwood is, by contrast, essentially a network consisting entirely of neighborhood collectors with nearly all roads developed at a 36-foot paved width within a 58-foot right-of-way and no limitations on lot access. The inevitable consequence of this design is that the streets that funnel traffic in and out of the neighborhood often experience relatively high traffic counts during peak periods and as to overall daily totals.

20. The primary example of such higher use levels is Fairwood Boulevard itself, which operates as a collector arterial even though designed for a lesser function. Similar patterns also exist at locations on the road system that connect Fairwood Boulevard at its intersection with 160th Place Southeast north into the Cavanaugh property. The most seriously impacted location appears to be the intersection of 160th Place Southeast and 162nd Avenue Southeast, where the current average daily trips total is estimated to be 1,615 vehicles and will go to approximately 2,141 ADT with the additional of Cavanaugh traffic. These figures are above the normal levels for a subcollector and are on the high side of neighborhood collector volumes as well. There may indeed be residences along this route that experience livability impacts from elevated traffic volumes, and at some point there may be the need to consider installation of stop signs and other traffic calming devices. But these volumes are not so much the impacts of any particular development as problems intrinsic to the Fairwood road system itself. Moreover, the County's method for addressing these problems is to evaluate them as needed according to a warrants analysis process that takes place largely outside the realm of development review, except in the case of clearly major new impacts. The SEPA Appellants have produced no evidence that warrants standards exceeded with development of the Cavanaugh plat, and they should deal with the County Department of Transportation directly if they believe further analysis is required.
21. It is also worth noting that the main reason that this northerly extension of the Fairwood neighborhood lacks a second road access is the decision made in early 1998 within the review for McGarvey Park (file no. L94P0022) to not require an access connection between McGarvey Park and Fairwood. A McGarvey Park connection was adamantly opposed by Fairwood residents on the grounds that it could lead to major traffic volumes diverting away from Petrovitsky Boulevard via McGarvey Park to Fairwood Boulevard. While the decision not to require a road connection between McGarvey Park and Fairwood was reasonable in terms of insulating Fairwood from increased traffic volumes from outside the immediate neighborhood, the inevitable corollary to that decision was that future infill development along the Fairwood fringe would necessarily receive access through the Fairwood road network as originally constructed.
22. Current County transportation policies as implemented through the 1993 King County Road Standards favor a more hierarchical road system than characterizes Fairwood development, with limited access collector arterials and neighborhood collectors being served by smaller local access streets. This policy shift is supported not only by residential impact considerations but also by the need to reduce impervious surface areas and the runoff impacts attendant thereto. One direct consequence of this change is that the 36-foot wide streets in Fairwood within 58-foot rights-of-way will link up to 24-foot wide streets in Cavanaugh within 40-foot rights-of-way. This also means that both Southeast 160th Place and Southeast 164th Place within the Cavanaugh plat will become narrow deadend cul-de-sacs at the termini of a lengthy single-access system adjacent to heavily wooded ravine slopes. During the 100-lot variance review Fire District No. 40 recommended that the Cavanaugh homes all be sprinklered, and the June 8, 2003,

road variance decision approved the 100-lot exceedance based “on the condition that all homes in the proposed subdivision are built having monitored residential fire sprinkler systems installed per National Fire Protection Association standards for residential sprinkler systems, and that this requirement is made an irrevocable condition of the plat.”

23. One of the SEPA appeal issues raised by the Home Owners’ Association was whether even with the sprinkler system, fire vehicle access to the plat would be deficient and serious safety risks would result. This concern was described by a number of area residents, including Darrel Jone who pointed out that sprinkler systems are effective for fires that occur inside a structure but are of minimal value in protecting against outside fires. He also testified that the ravine areas adjacent to the Cavanaugh property had experienced wildfire problems in the past and that an effective emergency response requires simultaneous access by a number of fire suppression vehicles. Mr. Jone’s analysis was supported by Sandy Haydock of Fire District No. 40, a deputy fire marshal who made the initial sprinklering recommendation to the County. She stated that fire access requirements mandate 20 feet of clear width, which on a 24-foot wide street would preclude parking on one side of the street.
24. The County’s analysis of fire equipment access requirements relied entirely upon the recommendation from Fire District No. 40. Both Mr. Comfort, the road variance official, and Kris Langley, the County’s transportation engineer assigned to this proposal, testified that they made no independent analysis of fire access requirements. Vince Geglia, the Applicant’s traffic engineer, argued extemporaneously for a 12-foot width based on typical vehicle sizes as he estimated them, an analysis that was only slightly compromised by the fact that for most of the hearing Mr. Geglia believed that the road width proposed for the plat was 26 feet.
25. Section 503.2.1 of the International Fire Code requires fire apparatus access roads to have “an unobstructed width of not less than 20 feet.” Section 503.4 of the IFC states that, “Fire apparatus access roads shall not be obstructed in any manner, including the parking of vehicles.” A 24-foot paved road width can only approximate the IFC requirements if parking is restricted to one side of the street.
26. An unpaved maintenance road runs down the center of the Bonneville Power easement from 160th Place Southeast west into the Cavanaugh property and crosses the proposed northern stormwater pond near its southern boundary. It also appears that this BPA road will intersect the proposed northern pond maintenance road and thus connect north to Southeast 160th Place. As such, it provides potential construction access to the northern tier of lots and their supporting utility infrastructure. The BPA maintenance road has no existing connection south into the southern pod of the Cavanaugh property, although it appears that a winding connection could be made to the south without crossing any of the delineated wetlands or their buffers. The distance required for making such a connection would be approximately 700 feet to the westernmost cul-de-sac bulb extending from Southeast 164th Place. The Cavanaugh plat developer has permission from BPA to use the existing maintenance road for construction purposes and to develop the stormwater tract and road system for the northern pod. No permission has been requested or granted to construct a new road connection through the BPA easement into the southern part of the Cavanaugh property.
27. Although use of the BPA maintenance road as a secondary emergency access route is theoretically possible, the Fire District 40 representative stated that in its current condition the District would decline to use it for fire apparatus access. The maintenance road is, however, a

practical route for logging equipment and trucks and for heavy equipment to access the northern development pod. Construction access to the southern pod will be via Southeast 164th Place. Due to the residential nature of the Fairwood streets accessing the Cavanaugh property, a construction traffic management plan should be developed and reasonable hours of operation observed. The plat conditions have been amended to provide for such a plan.

CONCLUSIONS:

1. The basic standard to be applied to the review of a threshold determination appeal is that the SEPA record must demonstrate the actual consideration of relevant environmental impacts. With respect to those relevant impacts shown to be actually considered, the decision of the SEPA official is entitled to substantial weight on review and shall not be overturned unless clearly erroneous based on the record as a whole.
2. In conjunction with the SEPA statute and regulations, KCC 20.24.080.B confers upon the Hearing Examiner broad authority to impose such conditions, modifications and restrictions on the appeal decision as may be required to make it compatible with the environment and carry out applicable statutes, regulations, codes, plans and policies. This authority supplements the SEPA appeal standards and allows specific conditions of mitigation to be imposed or modified independent of whether the determination of non-significance is found to be clearly erroneous.
3. The SEPA record discloses actual consideration by the Department of Development and Environmental Services of the potential environmental impacts of the Cavanaugh proposal in the areas of surface water drainage and traffic safety impacts and risks. There is no record of actual consideration by the Department of the emergency vehicle access requirements for the plat, safety risks to plat and other neighborhood residents from wildfires in the ravine, or impacts from construction activity. The Department's determinations in these three areas are not entitled to substantial weight on review.
4. While the plat's drainage impacts to the unstable ravine north of the Cavanaugh property have been studied in considerable detail, potential scenarios exist where drainage overflow from wetland Y could saturate surficial soils above the till layer, leading to interflow north to the ravine and a possible increase in slope destabilization at that location. It also is possible, however, to design the intervening Southeast 160th Place roadway in such a manner that it operates as a flow barrier, and such a requirement can be imposed under the 1998 Surface Water Design Manual, Section 1.2.2, without resort to SEPA authority. Accordingly the plat conditions have been modified to incorporate assurances that the roadway will operate as a seepage barrier, and the SEPA appeal on this issue will be denied.
5. No safety risks to pedestrians have been identified that are specifically attributable to the impacts of this proposal, and no elevated accident rate has been demonstrated to exist with respect to the Fairwood streets that access the Cavanaugh property. Rather the Appellants' risk analysis has relied on generalized assessments of daily traffic volumes. Such analysis does not demonstrate a probable significant adverse environmental impact from the Cavanaugh proposal, and County Department of Transportation procedures exist for the installation of traffic signage and calming devices if and when the need arises. The Appellants have not sustained their burden of proof to demonstrate that the plat will cause safety risks to pedestrians using the residential access streets of Fairwood.

6. As the termini of long cul-de-sacs without secondary access routes located adjacent to steep wooded slopes, construction of Cavanaugh plat roads entail the creation of fire risks which are not adequately alleviated by the implementation of building sprinkler systems. Adequate fire apparatus access is also needed consistent with International Fire Code requirements. For a 24-foot paved roadway, this means limiting parking to one side of the street so that an approximate 20-foot fire lane unobstructed width can be maintained. The MDNS conditions have been modified to include a requirement that parking be prohibited on the south sides of both Southeast 160th Place and Southeast 164th Place within the plat.
7. The need to clear development areas within the plat of large trees and to do major excavation for utility development and to create level building sites will necessitate bringing onto the Cavanaugh property logging trucks and equipment and large earthmoving machinery. This equipment should access the site via the BPA maintenance road to the maximum extent feasible. For vehicles and equipment that must access the plat via Fairwood residential streets, reasonable hours and conditions should be established. The plat conditions will be modified to include a construction access plan.
8. If the conditions of mitigation are modified in the manner provided below, the decision of the SEPA official is not clearly erroneous, is supported by the evidence of record and assures that there is no probability of significant adverse environmental impacts.
9. If approved subject to the conditions imposed below, the proposed subdivision makes appropriate provision for the public health, safety and welfare; serves the public use and interest; and meets the requirements of RCW 58.17.110.
10. The conditions of approval imposed herein, including dedications and easements, will provide improvements that promote legitimate public purposes, are necessary to serve the subdivision and are proportional to its impacts; are required to make the proposed plat reasonably compatible with the environment; and will carry out applicable state laws and regulations and the laws, policies and objectives of King County.

DECISION:

The SEPA threshold determination appeal is DENIED, subject to the modified conditions within the mitigated determination of non-significance specified below, and the preliminary plat application for the Cavanaugh subdivision as revised and received March 11, 2005, is APPROVED, subject to the following conditions of final plat approval:

1. Compliance with all platting provisions of Title 19A of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication that includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the base density and minimum density requirements of the R-4 zone classification. All lots shall meet the minimum dimensional requirements of the R-4 zone classification or shall be shown on the face of the approved preliminary plat, whichever is larger, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environment Services.

Any/all plat boundary discrepancies shall be resolved to the satisfaction of DDES prior to the submittal of the final plat documents. As used in this condition, a "discrepancy" is a boundary hiatus, an overlapping boundary or a physical appurtenance which indicates an encroachment, lines of possession or a conflict of title.

4. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).
5. The Applicant must obtain the approval of the King County Fire Protection Engineer certifying the adequacy of the fire hydrant, water main, and fire flow to meet the standards of Chapter 17.08 of the King County Code. Monitored sprinklers shall be required for all residences.
6. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in K.C.C. 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.
 - a. Drainage plans and analysis shall comply with the 1998 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.
 - b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
 - c. The following note shall be shown on the final recorded plat:

"All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file."
7. The stormwater detention facilities shall be designed at a minimum to the Level 2 flow control and basic water quality requirements per the 1998 King County Surface Water Design Manual (KCSWDM).

A stormwater adjustment (L04V0059) is approved for this site. All conditions of approval for this adjustment shall be met prior to engineering plan approval. The drainage design shall comply with the requirements of Core Requirement 1(tightline) of the 1998 KCSWDM. The design shall be in general conformance with the preliminary drainage control plan received March 11, 2005. Note that this plan includes an oversized pond on the north portion of the site to retain stormwater onsite to the maximum extent feasible.

8. An offsite drainage easement shall be obtained from the property owner to the west (King County) for the construction of the proposed tightline to Madsen Creek.
9.
 - a. The stormwater detention facilities and tightline designs shall include geotechnical recommendations. The geotechnical recommendations shall be included in the T.I.R. and incorporated into the design with submittal of the engineering plans.

Special geotechnical construction inspection of the stormwater detention facilities and tightline is required to ensure compliance with the geotechnical recommendations. Inspection reports shall be submitted to the assigned LUIS Construction Inspector during the construction phases of those facilities. A final construction report shall be submitted to the reviewing agency, verifying compliance with the geotechnical recommendations.
 - b. At the time of pond excavation the Applicant's geotechnical engineer shall submit to DDES a written recommendation as to whether the native till soils underlying the northern pond are adequate to serve as a pond bottom or whether a constructed pond liner will be required. Based on DDES approval of this recommendation, a pond infiltration rate shall be calculated. The new calculations shall demonstrate that the northern pond will have sufficient capacity to detain a 100-year storm event plus 10 percent additional capacity as a safety factor.
 - c. At engineering review the Applicant shall demonstrate that the design for Southeast 160th Place north of wetland Y will function as a barrier to block wetland interflow during storm events when the wetland receives flows from the northern stormwater pond. The design shall require the roadway to be seated on the glacial till surface or on other approved impermeable fill and for the road elevation to exceed the level at which the overflow from wetland Y will be conveyed to the downslope tightline.
10. The 100-year floodplain for all onsite streams and wetlands shall be shown on the engineering plans and the final plat per Special Requirement #2 in the KCSWDM.
11. The following road improvements are required to be constructed according to 1993 King County Road Standards (KCRS):
 - a. Roads SE 160th Place and SE 164th Place shall be improved at a minimum to the urban subaccess street standard. All conditions of approval for road variance L04V0058 shall be met prior to engineering plan approval.
 - b. Tract PD-1 shall be improved as a joint use driveway per Section 3.01 of the KCRS. This tract shall be owned and maintained by the lots served. Notes to this effect shall be shown on the final plat.
 - c. Tracts A-1 and A-2 shall be improved as a private access tracts per Section 2.09 of the KCRS. This tract shall be owned and maintained by the lot owners served. Notes to this effect shall be shown on the final engineering plans.
 - d. Tracts PD-1 and A-2 shall include a maintenance access easement to King County for maintenance of the drainage facility in Tract RD-1.

- e. Modifications to the above road conditions may be considered in accordance with the variance provisions in Section 1.08 of the KCRS.
- 12. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
- 13. The Applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The Applicant has the option to either: (1) pay the MPS fee at the final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
- 14. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to the recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.
- 15. The plant islands (if any) within the cul-de-sacs shall be maintained by the abutting lot owners or homeowners association. This shall be stated on the final plat.
- 16. The proposed subdivision shall comply with the Sensitive Areas Code as outlined in K.C.C. 21A.24. Permanent survey marking, and signs as specified in K.C.C. 21A.24.160 shall also be addressed prior to final plat approval. Temporary marking of sensitive areas and their buffers (e.g., with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are completed.
- 17. Preliminary plat review has identified the following specific requirements which apply to this project. All other applicable requirements from K.C.C. 21A.24 shall also be addressed by the Applicant.

Wetlands

- a. Class 2 wetland(s) shall have a minimum buffer of 50 feet, measured from the wetland edge.
- b. Class 3 wetland(s) shall have a minimum buffer of 25 feet, measured from the wetland edge.
- c. The wetland(s) and their respective buffers shall be placed in a Sensitive Area Tract (SAT).
- d. Buffer averaging may be proposed, pursuant to K.C.C. 21A.24.320, provided the total amount of the buffer area is not reduced and better resource protection is achieved, subject to review and approval by a DDES Senior Ecologist.
- e. A minimum building setback line of 15 feet shall be required from the edge of the tract.

Alterations to Wetlands

- f. If alterations of streams and/or wetlands are approved in conformance with K.C.C. 21A.24, then a detailed plan to mitigate for impacts from that alteration will be required to be reviewed and approved along with the plat engineering plans. A performance bond or other financial guarantee will be required at the time of plan approval to guarantee that the mitigation measures are installed according to the plan. Once the mitigation work is completed to a DDES Senior Ecologist's satisfaction, the performance bond may be replaced by a maintenance bond for the remainder of the five-year monitoring period to guarantee the success of the mitigation. The Applicant shall be responsible for the installation, maintenance and monitoring of any approved mitigation. The mitigation plan must be installed prior to final inspection of the plat.

Geotechnical

- g. Steep slopes and buffers areas shall be incorporated in a sensitive areas tract as shown on the preliminary plat map received March 11, 2005. Any alteration to the sensitive area tract must be approved by DDES and may require the submittal of a supplemental geotechnical report.
- h. The project geotechnical engineer shall review the engineering plans to insure that the grading and drainage plans adequately incorporate the project geotechnical recommendations.
- i. The Applicant shall delineate all on-site erosion hazard areas on the final engineering plans (erosion hazard areas are defined in K.C.C. 21A.06.415). The delineation of such areas shall be approved by a DDES geologist. The requirements found in K.C.C. 21A.24.220 concerning erosion hazard areas shall be met, including seasonal restrictions on clearing and grading activities.
- j. The following note shall be shown on the final engineering plan and recorded plat:

**RESTRICTIONS FOR SENSITIVE AREA TRACTS AND SENSITIVE
AREAS AND BUFFERS**

Dedication of a sensitive area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/sensitive area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The sensitive area tract/sensitive area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/sensitive area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/sensitive area and buffer. The vegetation within the tract/sensitive area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/sensitive area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the sensitive area tract/sensitive area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

18. Suitable recreation space shall be provided consistent with the requirements of K.C.C. 21A.14.180 and K.C.C. 21A. 14.190 (i.e., sport court[s], children's play equipment, picnic table[s], benches, etc.).
 - a. A detailed recreation space plan (i.e., location, area calculations, dimensions, landscape specs, equipment specs, etc.) shall be submitted for review and approval by DDES and King County Parks prior to or concurrent with the submittal of engineering plans. Fencing and plantings shall be installed adjacent to the steep slope buffers.
 - b. A performance bond for recreation space improvements shall be posted prior to recording of the plat.
19. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation, open space and/or sensitive area tract(s). The home owners' association shall be required to fund, in perpetuity, the operation and maintenance of the residential sprinkler system monitoring program.
20. Street trees shall be provided as follows (per KCRS 5.03 and K.C.C. 21A.16.050):
 - a. Trees shall be planted at a rate of one tree for every 40 feet of frontage along all roads. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
 - b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation determines that trees should not be located in the street right-of-way.
 - c. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
 - d. The trees shall be owned and maintained by the abutting lot owners *or* the homeowners association or other workable organization unless the county has adopted a maintenance program. Ownership and maintenance shall be noted on the face of the final recorded plat.
 - e. The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree

or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.

- f. The Applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.
- g. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.

A landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on the current county fees.

- 21. The following conditions have been established under SEPA authority as necessary requirements to mitigate the adverse environmental impacts of this development. The Applicant shall demonstrate compliance with these items prior to final approval.
 - a. A 4-foot high split-rail fence or other alternative as approved by DDES and signs shall be located along the outer boundaries of the wetland and steep slope buffers (i.e. Sensitive Area Tracts). The fencing and sign details shall be shown on the final engineering plans. Sensitive area signs shall be installed on the fence at 100-foot intervals or as appropriate. The fencing and signs shall be maintained by the abutting lot owners and/or Homeowner's Association as identified on the face of the final plat. Note, fencing shall not be installed within the BPA easement unless otherwise required by DDES (King County Comprehensive Plan Policies E-107, E-134).
 - b. A pedestrian activated signal shall be installed on Fairwood Boulevard. Location and construction details of this signal shall be coordinated with King County Dept. of Transportation prior to engineering plan approval.
 - c. No parking shall be permitted on the south sides of Southeast 160th and Southeast 164th Places within the plat, where "no parking—fire lane" signage shall be installed as required by IFC, appendix D, section D. 103.6 (King County Comprehensive Plan Policies U-131, T-305 and T-306; KCC 21A.28.130).
- 22. To implement K.C.C. 21A.38.230 which applies to the site, a detailed tree retention plan shall be submitted with the engineering plans for the subject plat. The tree retention plan and engineering plans shall be consistent with the requirements of K.C.C. 21A.38.230. No clearing of the subject property is permitted until the final tree retention plan is approved by LUSD. Flagging and temporary fencing of trees to be retained shall be provided, consistent with K.C.C. 21A.38.230.B.4. The placement of impervious surfaces, fill material, excavation work, or the storage of construction materials is prohibited within the fenced areas around preserved trees, except for grading work permitted pursuant to K.C.C. 21A.38.230.B.4.d.(2).

A note shall be placed on the final plat indicating that the trees shown to be retained on the tree retention plan shall be maintained by the future owners of the proposed lots, consistent with K.C.C. 21A.38.230.B.6. (Note that the tree retention plan shall be included as part of the final engineering plans for the subject plat.)

23. At engineering review, a construction traffic management plan shall be approved by DDES that directs logging equipment and trucks, earth moving equipment and other heavy vehicles to access the site via the BPA maintenance road to the maximum extent feasible. For such vehicles and equipment that must use either Southeast 160th or Southeast 164th Place, access hours shall be limited to 7:00 a.m. to 7:00 p.m. on weekdays.
24. a. A note to the following effect shall be placed on the face of the final plat:

“All homes within the plat shall be equipped with monitored residential fire sprinkler systems meeting National Fire Protection Association standards.”
- b. The future ownership of all regional utility corridor tracts within the plat shall be shown on the plat face.

ORDERED this 9th day of August, 2005.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 9th day of August, 2005, to the parties and interested persons of record:

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Gary & Brenda Beem
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Phyllis Cavanaugh
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Maple Valley WA 98038

KC & Tsai-Wei Chang
16026 - 160th Pl. SE
Renton WA 98058

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Jerry & Joanne Flagel
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Dick & Louise Flynn
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NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) ***on or before August 22, 2005***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before August 29, 2005***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE JULY 26, 2005, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L04P0013.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were Kim Claussen and Bruce Whittaker, representing the Department; Robert Johns representing the Applicant; Susan Sampson representing the Appellant; Todd Hurley, Craig Comfort, Kristen Langley, Jon Koloski, Mark Barber, Jim Goldsmith, William Stenberg, Vince Geglia, Sandy Haydock, Bill Jensen, Marlu Jensen, Darrel Jone, Bob Kelley-Wickemeyer, Meg Morgan, Cathie Freiling, Dick Freiling Bill Wittress, John Saddler and Jerry Flagel.

The following Exhibits were offered and entered into the record:

- Exhibit No. 1 DDES file no. L04P0013
- Exhibit No. 2 a DDES preliminary report to the hearing examiner dated 7/28/05
- b DDES SEPA report to the hearing examiner dated 7/26/05
- Exhibit No. 3 Application for Land Use Permits received 7/30/04
- Exhibit No. 4 SEPA Environmental checklist received 7/30/04
- Exhibit No. 5 SEPA Mitigated Determination of Non-significance, issued 5/27/05
- Exhibit No. 6 Affidavit of Posting indicating a posting date of 9/16/04; received by DDES on 9/23/04
- Exhibit No. 7 Plat map with adjacent ownership zoning diagram and cover sheet, received 3/10/05
- Exhibit No. 8 Assessor's maps (4): NW 26-23-05, NE 26-23-05, SW 23-23-05 and SE 23-23-05
- Exhibit No. 9 a Level One Downstream Analysis & Preliminary Drainage Control Plan by Goldsmith & Associates dated 7/04
- b Revised Level One Downstream Analysis & Preliminary Drainage Control Plan by Goldsmith Associates, received 3/11/05
- Exhibit No. 10 Revised Conceptual Drainage Plan (2 pages) by Goldsmith Associates, dated 3/11/05
- Exhibit No. 11 Preliminary Geotechnical Report by Terra Associates, Inc., dated 4/12/04
- Exhibit No. 12 Supplemental Geotech Evaluation by Terra Associates, Inc., dated 7/13/04
- Exhibit No. 13 Geotechnical Evaluation – Emergency Overflow Tightline Pipe by Terra Associates, Inc., dated 3/07/05
- Exhibit No. 14 Revised Traffic Impact Analysis by Transportation Planning & Engineering, Inc., dated 7/12/04
- Exhibit No. 15 Wetland & Wildlife study by Altmann Oliver Associates, LLC, dated 7/30/04
- Exhibit No. 16 King County Surface Water Design Manual adjustment letter for file no. L04V0059 dated 5/12/05
- Exhibit No. 17 King County Road Standards variance letter for file no. L02V0103, dated 6/18/03
- Exhibit No. 18 King County Road Standards variance letter for file no. L04V0058, dated 3/07/05
- Exhibit No. 19 SEPA appeal file no. L05AP011
- Exhibit No. 20 GeoEngineers reports and letters (15) with Letter of Transmittal cover
- Exhibit No. 21 Amended Land Use Agreement for BPA easement, dated 7/07/05
- Exhibit No. 22 Plat of Valley Faire II (pages 39-43) dated 3/85